

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-CV-10756
Hon. Marianne O. Battani

NAVIGATION CATALYST SYSTEMS, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; FIRSTLOOK, INC.,
a Delaware corporation; and EPIC MEDIA
GROUP, INC., a Delaware corporation,

Defendants.

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**DEFENDANTS CONNEXUS CORPORATION, FIRSTLOOK, INC., AND
NAVIGATION CATALYST SYSTEMS, INC.'S PROPOSED JURY INSTRUCTIONS**

PROPOSED JURY INSTRUCTIONS

Local Rule 16.4(d) requires that the parties serve and file their proposed jury instructions on the first day of trial. Defendants Connexus Corporation, Firstlook, Inc., and Navigation Catalyst Systems, Inc. (collectively “Defendants”) hereby incorporate the jury instructions agreed upon by the parties and Defendants’ proposed jury instructions that were submitted to the Court in the Bench Book filed on February 28, 2012. See Docket No. 269, Exs. 7, 9.

In addition those jury instructions submitted with the Bench Book , Defendants request one additional instruction as indicated below.

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DEFENDANTS' PROPOSED INSTRUCTION NO. 23

Throughout the trial, you have heard evidence of trademarks owned by third parties that are not involved in this specific lawsuit. In the event, you elect to award damages, the damages you award may only relate to the Plaintiff in this lawsuit. You may not award this particular plaintiff any damages with respect to third parties who may bring lawsuits of their own.

Authority:

Plaintiff has indicated that it intends to introduce evidence of domain names registered by Defendants which allegedly violate the trademark rights of third parties that are not in this lawsuit. Such evidence creates the possibility (if not probability) that a damages award in this matter, if any, would incorporate damages related to these third parties.

In *Philip Morris U.S.A. v. Williams*, 127 S. Ct. 1057, the Supreme Court held that damages awarded to compensate for alleged misconduct to non-parties violates the Due Process Clause of the Constitution. For that reason, where the evidence refers to non-parties, the Court must, upon request, issue a jury instruction which protects against an award of damages related to non-parties. Defendants maintain that the rationale in *Williams* is equally applicable to cases involving statutory damages and respectfully submit that the Court issue this instruction to protect against a violation of due process.

Respectfully Submitted,

Dated: May 29, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2012, I electronically filed the foregoing paper with the Court using the ECF system which will send notification of such filing to the following:

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